

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Anthony J. Baerlocher
Appl. No.: 10/649,091
Filed: August 27, 2003
Title: GAMING DEVICE HAVING A MULTIPLE SELECTABLE INDICATOR
GAME
Art Unit: 3714
Examiner: Matthew D. Hoel
Conf. No.: 4932
Docket No.: 3718611.01411

Mail Stop OFFICE OF PETITIONS / OPLA

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

**REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT
UNDER 37 C.F.R. § 1.705(b)**

Sir:

Applicant's representative has received comments that a formal U.S. Patent Office Notice will be forthcoming to address the practitioners duty to disclose a Patent Term Adjustment ("PTA") calculation error, and will include an advisory that the Office of Petitions will no longer be providing substantive reviews and decisions on the recommended good faith *Letters Regarding Patent Term Adjustment at Allowance Pursuant to Comment 43 of the Final Rule* which suggest that the total term adjustment is thought to be longer than appropriate.

If the Patent Office has taken such a course of action, and already commenced practicing a non-review procedure for the *Letters Regarding PTA*, as an alternative, Applicant hereby petitions for reconsideration of the Patent Term Adjustment accorded the above-referenced application at time of allowance. The *Notice of Allowance and Determination of Patent Term Adjustment* under 35 U.S.C. 154(b), mailed April 12, 2010, states that the Total PTA is 512 days. That is, USPTO Delay days 640 and

Applicant Delay days 128. The Applicant (APPL) Delay days of 128 appear to be understated, resulting in the Total PTA being longer than appropriate.

Applicant respectfully requests a review of the prosecution file history with attention to the December 04, 2008 filing of a *Supplemental Information Disclosure Statement* proceeding a *Response after Non-Final Action*.

STATEMENT OF FACTS

The PAIR Transaction History correctly reflects that responsive to the *Non-Final Rejection* mailed July 07, 2008, a *Response After Non-Final Action* was timely received in the Office on August 04, 2008 by EFS. Subsequently, on December 04, 2008, a *Supplemental Information Disclosure Statement* was filed in accordance with the provisions of 37 C.F.R. 1.56, 37 C.F.R. 1.97, and 37 C.F.R. 1.98, and "Submitted without Certification," indicating the filing was "After the period specified above, but before the mailing date of a Final Action under 37 CFR 1.113, a Notice of Allowance under 37 CFR 1.311, or an Action that otherwise closes prosecution in the application and is accompanied by payment of the fee set forth in 37 CFR 1.17(p)."

37 C.F.R. 1.70 (c) (8) provides:

Submission of a supplemental reply or other paper, other than a supplemental reply of other paper expressly requested by the Examiner, after a reply has been filed, in which case the period of adjustment set forth in §1.703 shall be reduced by the number of days, if any, beginning on the day after the date the initial reply was filed and ending on the date that the supplemental reply or other such paper was filed.

REMARKS

In consideration of the events described above, Applicant believes the Total PTA calculation of 512 days is overstated as of the allowance date. Applicant respectfully requests reconsideration of the patent term adjustment in the following manner.

- 1) USPTO Delay (PTO) Delay: 640 days – correct as stated;
- 2) APPL Delays be corrected to reflect a reduction beginning on the day following the *Response After Non-Final Action*, August 05, 2008, to, and including, the filing date of the December 04, 2008 *Supplemental Information Disclosure Statement*, thereby increasing the APPL Delay days by 122 days, from 128 to 250 days;
- 3) Total PTA days be reduced from 512 to 390 days (640 minus 250)

Pursuant to 37 CFR § 1.18(e), the fee of \$200 is submitted herewith. To the extent that any additional fees are due and owing for this Petition, the Commissioner is hereby authorized to charge them to Applicant's undersigned attorney's Deposit Account 02-1818.

Thank you for your consideration.

Respectfully submitted,

K&L Gates LLP

BY



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Dated: June 30, 2010